REMARKS

Summary of Office Action

In the Office Action, the Examiner withdrew the allowance of Claims 1-7 and 10-18. The Examiner has instead rejected Claims 1-7 and 10-18 under 35 U.S.C. § 102(b) as being anticipated by Frangion, *i.e.*, U.S. Patent No. 5,782,992 (hereinafter "Frangion"). The Examiner also rejected Claims 1-7 and 10-18 under 35 U.S.C. § 102(b) as being anticipated by Neff, II et al., *i.e.*, U.S. Patent No. 5,270,002 (hereinafter "Neff"). Finally, the Examiner contends that the intended use does not create a patentably distinct invention, since the claims are drawn to a composition. *Id.*

Applicant's Response

1. Claim 1

Applicant has amended Claim 1 to read ..."and wherein the composition is at pH range between about ~~0.0~~ 6.0 and about 8.8." This amendment is solely to correct a typographical error and does not introduce any new matter since the pH range terminology is supported in the specification.

2. Section 102(b) Rejections of Claims 1-7 and 10-18

The Examiner contends that Frangion teaches the use of a chlorite compound, such as sodium chloride, and hydrogen peroxide at the claimed concentrations. *Office Action, Page 2.* The Examiner also submits that Frangion teaches the use of lubricating polymers and surfactants. *Id.*

Applicant's independent Claim 1 recites, *inter alia*, "...comprising from about 0.001 wt.% to about 0.2 wt.% chlorite compound ***and*** from about 0.001 wt.% to about 0.05 wt.% peroxy compound..."

Applicant respectfully submits that Frangion does not disclose the use of a chlorite compound ***and*** the use of hydrogen peroxide. As the Applicant understands Frangion, it discloses an ophthalmic solution containing a polymeric N-vinyl-α-pyrrolidone (PVP) and an oxidizing agent. *Column 2, lines 59-67.* In fact, one of the passages the Examiner cites to support the proposition that Frangion anticipates Applicant's claims explicitly states, "...an

antimicrobial composition of a germicidal polymeric nitrogen compound and ***an*** oxidizing agent, *e.g.*, chlorine dioxide, chlorite, stabilized chlorine dioxide ***or*** hydrogen peroxide..." *Column 2, lines 8-15* (emphasis added).

Furthermore, Frangion states that, "...the present invention involves an ophthalmically acceptable solution for use with contact lenses comprising ***an*** oxidizing agent and a specific type of PVP which...Preferably ***the*** oxidizing agent of the present invention is selected from the group consisting of chlorine oxides..." *Column 3, lines 43-51* (emphasis added). As such, it is Applicant's understanding that Frangion only discloses an ophthalmic solution containing a PVP and ***an*** oxidizing agent, preferably a chlorine oxide, and does not disclose using ***both*** a chlorite compound ***and*** a peroxy compound ***together***. Furthermore, Frangion is not believed to disclose the claimed concentration ranges of ***both*** chlorite and peroxy compounds. In particular, as noted by the Examiner, Frangion discloses a ***sodium chlorite*** concentration of "from about 0.008% (w/v) to about 0.3% (w/v) sodium chlorite. *Column 4, lines 3-9.* However, Frangion is not believed to disclose any suitable range for a peroxy compound concentration, and certainly not for the concentration of a peroxy compound in combination with a chlorite compound.

For the foregoing reasons and because Frangion fails to disclose the above-noted features of the present invention, Applicant submits that Frangion fails to disclose each and every recited feature of the present invention as recited in independent Claim 1.

Accordingly, Applicant submits that the Examiner has failed to provide an adequate evidentiary basis to support the rejection under 35 U.S.C. § 102(b) and that the present rejection of Claim 1 is improper and should be withdrawn.

Applicant further submits that the Claims 2-7 and 10-18 are allowable at least for the reason that these claims depend on allowable independent Claim 1 and because these claims recite additional features that further define the present invention.

The Examiner contends that Neff teaches the use of hydrogen peroxide and chlorine dioxide, such as sodium chloride, in an ophthalmic formulation. *Office Action, Page 2.* The Examiner also submits that Neff teaches the use of wetting agents and the claimed pH. *Id.*

Applicant's independent Claim 1 recites, *inter alia*, "...comprising from about 0.001 wt.% to about 0.2 wt.% chlorite compound ***and*** from about 0.001 wt.% to about 0.05 wt.% peroxy compound..."

Applicant respectfully submits that Neff does not disclose the use of a chlorite compound ***and*** the use of hydrogen peroxide. In fact, the Neff patent contains statements throughout explicitly stating that the medium contains ***either*** chlorine dioxide ***or*** hydrogen peroxide. For example, *Column 2, lines 6-9* ("...a liquid medium containing chlorine dioxide precursor ***or*** hydrogen peroxide.); *Column 2, lines 33-36* ("...liquid medium containing at least one chlorine dioxide precursor ***or*** hydrogen peroxide.); *Column 6, line 63-Column 7, line 2* ("The chlorine dioxide-containing liquid medium ***or*** the hydrogen peroxide-containing liquid medium...the device to be disinfected is contacted with the chlorine dioxide-containing liquid medium ***or*** the hydrogen peroxide-containing liquid medium...") (emphases added). As such, these passages show that Neff envisions using ***either*** a chlorine dioxide disinfectant solution ***or*** a hydrogen peroxide solution in the apparatus disclosed by Neff, but does not disclose using a solution containing ***both*** chlorine dioxide ***and*** hydrogen peroxide, and certainly does not disclose such a solution using the concentration ranges recited in Applicant's Claim 1.

For the foregoing reasons and because Neff fails to disclose the above-noted features of the present invention, Applicant submits that Neff fails to disclose each and every recited feature of the present invention as recited in independent Claim 1.

Accordingly, Applicant submits that the Examiner has failed to provide an adequate evidentiary basis to support the rejection under 35 U.S.C. § 102(b) and that the present rejection of Claim 1 is improper and should be withdrawn.

Applicant further submits that the Claims 2-7 and 10-18 are allowable at least for the reason that these claims depend on allowable independent Claim 1 and because these claims recite additional features that further define the present invention.

Conclusion

Applicant respectfully submits that each and every pending claim of the present invention meets the requirements for patentability under 35 U.S.C. §§ 112, 102, and 103, and

respectfully requests that the Examiner indicate allowance of each and every pending claim of the present invention.

In view of the foregoing, it is submitted that none of the references of record, either taken alone or in any proper combination thereof, anticipate or render obvious Applicant's invention as recited in each of Claims 1-7 and 10-18. The applied references of record have been discussed and distinguished, while significant claim features of the present invention have been pointed out.

Accordingly, reconsideration of the outstanding Office Action and allowance of the present application and all the claims therein are respectfully requested and believed to be appropriate.

If any additional fee is required, please charge Deposit Account Number 19-4330.

Respectfully submitted,

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